

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 27.3.1996.

MISC. CRIMINAL APPLICATION NO.                      OF 1996.

( SUO MOTU CONTEMPT PROCEEDINGS )

WITH

SPECIAL CRIMINAL APPLICATION No 1624 of 1995

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RAMANLAL JETHALAL SHAH,

Versus

STATE OF GUJARAT  
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FOR APPROVAL AND SIGNATURE

THE HONOURABLE Mr.JUSTICE K.J. VAIDYA,

AND

THE HONOURABLE Mr.JUSTICE M.H. KADRI.

1. Whether Reporters of Local Papers  
may be allowed to see the Judgment?
2. To be referred to the Reporter or  
not ?
3. Whether Their Lordships wish to see  
the fair copy of Judgment ?
4. Whether this case involves a subst-  
-antial question of law as to the  
interpretation of the Constitution  
of India, 1950 or any order made  
thereunder ?
5. Whether it is to be circulated to  
the Civil Judges ?

Mr.A.D.Padiwal, Advocate, for the Petitioner.

Mr.J.A.Shelat, APP, for Respondent No. 1

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CORAM : MR.JUSTICE K.J.VAIDYA and  
MR.JUSTICE M.H.KADRI  
(Dt.27.3.1996)

ORAL JUDGMENT (per VAIDYA, J)

1. Unprecedented as it is, this contempt proceeding has indeed quite shocking and stunning background, where Mr.N.I.Qureshi, a Peon of this court, taken as a special messenger to directly serve the Notice upon the respondent Police Officer from Calcutta, on his not being found at Hotel Yatri Nivas, Ahmedabad, where he was addressed to be staying temporarily, the petitioner, quite surprisingly in his fancy, taking law the jurisdiction of the court in his hands, in a dare devil manner, and in total affront to the image of the High Court. abusing the facility granted to him, took the said Mr.N.I.Qureshi out of the jurisdiction of Gujarat State, from Ahmedabad to Bombay, from Bombay to Delhi, from Delhi to Calcutta, to serve the notice and ultimately returned empty-handed back to Ahmedabad !! No citizen with average intelligence and understanding ordinarily would have done this, and yet the fact remains that the petitioner who cannot be underestimated in intelligence and understanding has wilfully done it.

2. To briefly narrate few relevant facts leading to this contempt proceedings, it may be stated that one Ramanlal Jethalal Shah, filed writ petition, the same being Special Criminal Application No. 1624 of 1995 against one Mr.Shaikh, a Police Officer from Behala Police Station, Calcutta, who at the relevant time was camping at Hotel Yatri Nivas, Near Pilot Dairy, Kankaria, Ahmedabad, alleging therein that his son Mehul was illegally detained against his wishes and was tortured with some ulterior motive inter-alia praying for issuance of the writ of Habeas Corpus directing him to produce him before this court.

3. When this matter came up for admission on 8.12.1995, this Court issued Notice making it returnable on 11.12.1995, whereby Police Officer Mr.Shaikh was

directed to produce before this court Mehul Shah, who was arrested in connection with Criminal Case No. 606 of 1995 registered at Behala Police Station, Calcutta (W.B.). On further request being made by Mr.A.D.Padival, ld.Advocate appearing for the petitioner, this court also directed the notice to be served through the Special Process Server of the High Court and accordingly, office deputed Peon Mr.N.I.Qureshi, to go alongwith the petitioner to do the needful. Thereafter since it was reported that as Mr.Shaikh, had already left Hotel Yatri Nivas alongwith Mehul Shah for enplaning to Calcutta, the petitioner, taking Mr.Qureshi with him, rushed to the airport and there also on finding that Mr.Shaikh had taken the flight, further chasing him and his son in hot-haste, he enplaned alongwith Mr.Qureshi, went to Bombay, thereafter from Bombay to Delhi, from Delhi to Calcutta, to trace and serve Mr.Shaikh with the Notice of this Court and ultimately returned to Ahmedabad unsuccessfully. On coming to know about this quite unbelievable, surprising and shocking fact this court, by an order dated 15.12.1995, was constrained to pass the following order:

" The office is directed to issue a notice against Ramanbhai Jethabhai Shah to appear before this court on 9.1.96 to answer the charge as to why and with whose permission he had compelled Mr.Kureshi, Spl. Messenger who was assigned the duty to serve the process at Hotel Yatri Nivas, Ahmedabad only, to take him at various places, viz. Bombay, Delhi & Calcutta. Having regard to the gravity and seriousness of the fact-situation we indeed would have asked him to remain present before this court on 18.12.95, but Mr.Padival, the ld.Advocate has stated that his son is arrested by Calcutta Police and therefore, he is not here. S.O.to 9.1.96. "

3.1 In response to the above notice when the matter was called out, Mr.A.D.Padiwal, the ld.Advocate appearing for the contemner requested some more time to enable him to file the reply-affidavit. This was granted and accordingly the hearing of this contempt notice was adjourned to 11.1.1996. On that day, the petitioner filed affidavit-in-reply, which was taken on record. Considering the averments made in the said affidavit, more particularly in view of paras 5 and 6 thereof, wherein it has been specifically stated that on the request being made to Mr.Qureshi to go alongwith him

(petitioner Ramanlal) to ensure service of the notice issued by this Court on Mr. Shaikh, P.I., Behala Police Station at Calcutta, he had agreed to accompany. On this averment, we immediately summoned Mr. Qureshi in the court and explained to him in Gujarati the contents of the said affidavit. Thereupon as Mr. Qureshi categorically denied some of those averments, we directed him to file detailed affidavit dealing with the allegations made against him in the reply-affidavit filed by Ramanlal, and accordingly to enable Mr. Qureshi to file detailed affidavit, the matter was once again further adjourned to 18.1.1996.

3.2 On 18.1.1996, Mr. Qureshi filed an affidavit, which was ordered to be taken on record, where in substance, in paragraphs 3, 4 and 5, it has been stated as under:

"3. Now, I beg to give background of the circumstances under which I was taken by Shri Ramanlal Jethalal Shah to Bombay, Delhi and Calcutta. The same are as under :-

(1) I state and submit that on 8.12.1995, I was called by the Deputy Registrar, Criminal Branch, to go and serve a notice issued by the Hon'ble Court (Coram: K.J.Vaidya & M.H.Kadri, JJ.) upon Shri Shaikh, Police Officer of Behala Police Station, Calcutta, at Hotel Yatrik, Nr. Pilot Dairy, Kankaria, Ahmedabad. The aforesaid notice was ordered by the Hon'ble Court to be served through the Special Messenger. I took the packet containing the aforesaid order and went alongwith Shri Ramanlal Shah to Hotel Yatrik. When we went there, I was told by Shri Ramanbhai that he had received information that the said Mr. Shaikh, Police Officer had left the Hotel for going to Calcutta and he is at the Airport. Thereafter I was taken to the Airport. There I was informed by Shri Ramanbhai that the said police officer has left for Bombay. At that point of time, I started for coming back to the High Court. At that time, Shri Ramanbhai told me that the High Court has issued notice and that you (I) will have to serve the same upon the police officer wherever he is, to which, I declined. At that point of time, Shri Ramanbhai contacted someone on telephone and after completing the talk, he came to me and asked me that the High Court has passed an order to serve the said notice upon the police officer wherever he is and that you (I) will have to go and serve

the said notice. He also told me that this is the order of the court and shown me some order which was in English language. I do not know English, and therefore I believed his version. I was told by Shri Ramanbhai that since the police officer has gone to Bombay, we will have to go to Bombay by the next flight, to which, after much persuasion, I agreed. Thereafter, I told Shri Ramanbhai that I will have to go to the office to report and also to my home to inform them about my going to Bombay. Thereupon Shri Ramanbhai told me that now the time is very short and it will not be possible for you (me) to go and come back, therefore, give your residential address, my man will go to your house and he will inform your family members. Shri Ramanbhai also told me that as regards reporting to the office is concerned, since there is order of the Hon'ble Court, it is not necessary to inform the office because everything is written in the order itself. Under the aforesaid circumstances, and trusting that whatever Shri Ramanbhai is stating is true, I agreed to accompany him to serve the notice upon the police officer.

4. I state and submit that since I do not know English and therefore what Shri Ramanbhai told me, I believed it to be true, and under the said bonafide belief, I agreed to leave the territory of this Hon'ble court. I was also given to understand by Shri Ramanbhai that if I will not accompany him, it would amount to contempt of the court. Thus, under the aforesaid circumstances, I had accompanied Shri Ramanbhai to Bombay, therefrom to Delhi, and therefrom to Calcutta.

5. In view of the aforesaid facts and circumstances of the case, I hereby deny the averments and allegations made against me by Shri Ramanbhai in the aforesaid affidavit. I further state and submit that in view of the aforesaid peculiar facts and circumstances, I could not take prior permission of the Hon'ble Court for leaving the jurisdiction of this Hon'ble Court. I hereby request the Hon'ble Court to view the aforesaid lapse sympathetically keeping in mind the aforesaid circumstances. I further state and submit that the aforesaid lapse, which is first in my service career is committed because I relied and trusted the say of Shri Ramanbhai, and

I hereby tender my unconditional apology for the same."

3.3 Thereafter the matter was adjourned from time to time as the court was busy with admission work, and ultimately on 12.3.1996, this Court passed the following order:

" In response to our direction to the petitioner Ramanlal J. Shah and Nasruddin Ibrahim Kureshi given by this court, they have filed their respective affidavits. We have carefully gone through the same. Taking into consideration the facts and circumstances of the case, it prima-facie appears that the petitioner Ramanlal J. Shah has committed contempt of the Court. In that view of the matter, the office is directed to issue notice to Ramanlal J. Shah making it returnable on 21.3.1996 calling upon him to show cause as to why the contempt proceedings should not be taken against him. So far as Shri Kureshi is concerned, taking into consideration the affidavit filed by him, there is indeed nothing on the basis of which a notice of contempt is required to be issued. "

4. In response to this notice, when the matter was called out, the petitioner has not filed any further affidavit showing cause as to why contempt of court proceedings should not be initiated against him. According to the petitioner, he has already placed his case in the earlier affidavit and he does not intend to add a word further. In this view of the matter we, framed the following charge against Ramanlal Jethalal Shah.

" You Ramanlal Jethalal Shah had filed Special Criminal Application No. 1624 of 1995, in this High Court to get your son Mehul R. Shah released from the illegal custody of Mr. Shaikh, P.S.I., Behala Police Station, Calcutta. This Court (Coram: K.J.Vaidya & M.H.Kadri, JJ.) by order dated 8.12.1995, issued notice to P.S.I. Mr. Shaikh who had put up at Hotel Yatri Nivas, Maningar to produce your son before this Court. The said notice was, at your instance, directed to be served through special messenger. Accordingly N.I. Qureshi, Peon of this court was

sent to serve the notice on P.S.I. Mr. Shaikh at Hotel Yatri Nivas, Maninagar. But the time the notice could be served on P.S.I. Mr. Shaikh by the special process server, Mr. Shaikh had already left Ahmedabad alongwith Mehul R. Shah on way to Calcutta. Thereupon, you the contemner, by abusing the process of the court had taken the special process server Mr. Qureshi, without the permission of this court, out of the jurisdiction of State of Gujarat, to Bombay, to Delhi and to Calcutta. This wilful disobedience on your part amounts to contempt of this Court. "

5. Now, as required by sub-section (5) of section 17 of the Contempt of Courts Act, 1973 (hereinafter referred to as "the Act"), as stated hereinabove, the petitioner was given opportunity to file affidavit in support of his defence to the charge. However, as already stated above, he has not filed any further affidavit, and chosen to rely upon the earlier one in this proceeding also. What he has further orally submitted is that he is an old disabled man aged 65, suffering from high Blood Pressure, Diabetes and heart ailment. Further according to him, since his son Mehul was illegally arrested by the Police Officer from Calcutta, on patently false accusation and was confined in Hotel Yatri Nivas, Kankaria, Ahmedabad, where he was likely to be tortured with a view to extort some confessions and money, he filed the writ petition for Habeas Corpus. According to the petitioner, his son was absolutely innocent and was indeed falsely implicated by the unscrupulous complainant at Calcutta, with a view to coerce settlement in the civil dispute with the help of police. Further, according to the petitioner, it was under these constraints that on not finding the Police Officer Mr. Shaikh at Hotel Yatri Nivas, and coming to know that he had already left for Airport on way to Calcutta, he rushed to the airport, and on reaching the airport, on further learning that Mr. Shaikh had already left for Calcutta, he in his anxiety to rescue his son, had to immediately enplane for going to Calcutta. According to him he was not knowing that Mr. Qureshi could not be taken out of the jurisdiction of this High Court, and therefore, he expressed his sorrow and repentance for the same and requested that lenient view be taken in the matter.

6. We have anxiously taken into consideration, the explanation of the contemner. He has not denied the facts constituting alleged offence in charge. The explanation given by the contemner is rather an attempt

to indirectly justify his illegal act of taking Mr.Qureshi out of Ahmedabad in utter defiance of this court's jurisdiction. Of course, thereafter in the alternative contemner has expressed sorrow and repentance for whatever he has done. It is indeed not possible to gulp-down the explanation put forward by the contemner. He appears to have been ill-advised which suiting to his rashness and exigency of immediate interest accepted the same acting contrary to law. Further, merely because the contemner has expressed sorrow and repentance, that is hardly an answer to the gross contempt of this court committed by him to take a lighter view of the matter in awarding sentence. Saying 'sorry' and that 'I am repenting' is indeed not the panacea for all sorts of contempt. Any person when he finds himself inextricably clutched and in tight corner, with a view to wriggle out from the rigour of impending sentence just utters out some words of the sorrow and repentance. These are not always as a result of sincere, honest repentance. Under the circumstances, the court must constantly guard against such feigned trickeries, where the contemner under the mask of innocence does not mislead and further cheat the court to get away with lighter sentence. In fact, just to spit on somebody's face and then saying sorry is not genuine expression of sorrow and repentance! Most of the time it is a scheming cover to further save from the situation. If such scheming 'sorrow' and 'repentance' are lightly permitted, cases of gross contempt would simply go unpunished and thereby the penal provision made in the Contempt of Courts Act, would be reduced to lifeless cold-prints frustrating the very object of the Act ! The court is not expected to be a gullible child to accept whatever is submitted by the contemner. It all depends upon the facts and circumstances of each case. In this case, we feel that expression of sorrow and repentance is not sincere. In this view of the matter, we have indeed no hesitation in holding not only the petitioner is guilty for the contempt of this court but he deserves to be awarded exemplary deterrent punishment.

7. This accordingly takes us now to the next important question, viz. what would be the proper punishment ? Ordinarily, for the alleged contempt this court was quite inclined to take the strictest possible view of the matter by imposing maximum punishment of imprisonment and fine also. However, taking into consideration the fact that the petitioner is an old man aged 65, various diseases he is suffering from, and the psychological pressure and breakdown under which he committed the illegal act of taking the process server of



the court out of the jurisdiction of Gujarat State, we feel it will be little unjust and harsh to sentence the petitioner to suffer imprisonment, and in that view of the matter, at the cost of repetition, we may say that though this is one of the grossest case where the petitioner deserves to be sent to jail for committing contempt of the court, still we restrain ourselves from doing so, and impose only a fine of Rs.2,000/- and in default of payment of the same to undergo further S.I. for 15 days. Further, taking into consideration the fact that not only the petitioner has abused the process of the court and committed contempt thereby, but since he has also wasted the most precious public time and money of this court, as well as of the ld.APP, we impose an additional cost of Rs.3,000/- on him. Accordingly, the petitioner shall deposit the total amount of Rs.5,000/as ordered above, on or before 5.4.1996. On such deposit being made, the amount of Rs.3,000/- shall be paid to the Legal Aid and Advice Board.

7.1 Further, incidentally enough we also feel that taking into consideration such type of gross cases of contempt of court, the punishment of simple imprisonment for a term which may extend to six months or with fine which may extend to Rs.2,000/- only is litte too liberal and grossly inadequate. But we have no other alternative but to restrict ourselves in imposing sentence in view of S.12 of the Act. Now, this fine of Rs.2,000/- was fixed by the Parliament as long back as in the year 1971, and thereafter the value of rupee has fast dwindled, and thus taking into consideration, the comparative devaluation of rupee, we recommend Law Commission that quantum of fine amount is required to be suitably enhanced. Not only that but with a view to make a weapon of the contempt of court little more effective and decisive, we also feel that the substantive sentence of imprisonment needs to be extended upto 12 months in place of six months.

8. In the result, Ramesh Jethalal shal is convicted for the contempt of this court and sentenced to pay a fine of Rs.2,000/- (Rs. two thousand only) and in default to undergo S.I. for 15 days. The contemner is also further directed to pay additional amount of Rs.3,000/- by way of cost. The said amount of fine of Rs.2,000/- and the cost amount of Rs.3,000/- shall be paid on or before 9.4.1996 in this court. Rule in the Misc.Criminal Application is made absolute, and the Notice in the Special Criminal application is discharged. Office is directed to sent a copy of this judgment to the Law Commission.

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